IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 870 of 2005(C)

AGAINST THE ORDER IN EA. 35/04 IN OS.93/1999 of SUB COURT, KOTTARAKKARA

PETITIONERS:

1. UDAYAKUMARI, AGED 33 YEARS, W/O. LATE ULLAS S., PUTHENVEEDU, PUNJAKONAN, KARUKONE P.O., ANCHAL, PRESENTLY RESIDING AT HER MOTHER'S HOUSE AT PAYATTUVILA VEEDU, THADIKADU P.O ANCHAL.

2. ASRUTA ALIAS SREEKUTTY, AGED 12 YEARS, D/O. ULLAS AND UDAYAKUMARI, PUTHENVEEDU, PUNJAKONAN, KARUKONE P.O., ANCHAL, PRESENTLY RESIDING AT PAYYATTUVILA VEEDU, THADIKADU P.O., ANCHAL - MINOR REPRESENTED BY HER MOTHER UDAYAKUMARI.

3. ANANTHU, AGED 9 YEARS, S/O. LATE ULLAS AND UDAYAKUMARI, PUTHENVEEDU, PUNJAKONAN, KARUKONE P.O., ANCHAL, PRESENTLY RESIDING AT PAYATTUVILA VEEDU, THADIKADU P.O., ANCHAL - MINOR REPRESENTED BY HIS MOTHER UDAYAKUMARI.

BY ADV. SRI.NOBLE MATHEW

RESPONDENTS:

1. THE CATHOLIC SYRIAN BANK LIMITED, THRISSUR, PUTHUR BRANCH, REPRESENTED BY ITS MANAGER, PUTHUR P.O., KOLLAM DISTRICT.

2. B.VINOD, S/O. BAHULEYAN, PROPRIETOR, VASCO AGENCIES, AMBALA NAGAR,PUTHUR RESIDING AT VINOD BHAVAN, VELLIMAN P.O., KOLLAM DISTRICT.

3. K.BAHULEYAN, AGED 55 YEARS, S/O. KUMARAN, RESIDING AT VINOD BHAVAN, PERINAD VILLAGE, VELLIMAN P.O., KOLLAM DISTRICT.

BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN
SRI.VINOY VARGHESE KALLUMOOTTILL for R3
SRI. B.S. KRISHNAN for R1.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1: PHOTOSTAT COPY OF THE DEATH CERTIFICATE ISSUED BY THE SECRETARY, AAYAMAM PANCHAYAT DATED 20.06.2001.

EXT.P2: PHOTOSTAT COPY OF THE NOTICES ISSUED FROM THE HON'BLE SUBORDINATE JUDGE'S COURT, KOTTARAKKARATO THE 2ND AND 3RD PETITIONERS DATED 04.03.2003.

EXT.P3: PHOTOSTAT COPY OF THE PETITION FILED BY THE 1ST PETITIONER BEFORE THE HOB'BLE SUBORDINATE JUDGE'S COURT AT KOTTARAKKARA DATED 16.02.2004.

EXT.P4: PHOTOSTAT COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT IN EXT.P3 APPLICATION FOR EXEMPTING THE PETITIONER'S SMALL PIECE OF LAND FROM SALE PROCEEDINGS DATED 22.05.2004.

EXT.P5: PHOTOSTAT COPY OF THE ORDER DATED 02.11.2004 OF THE HON'BLE SUBORDINATE JUDGE AT KOTTARAKKARA, DISALLOWING THE PETITIONERS APPLICATION FOR EXEMPTING THEIR LAND.

/True Copy/

P.A to Judge.

KURIAN JOSEPH , J

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W.P.(C) NO. 870 OF 2005

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Dated this the 21st day of June, 2007

JUDGMENT

The petitioners are aggrieved by Ext.P5 order passed by the Execution Court in E.A. No. 35/2004 in O.S. 93/1999. The application was for exempting 'C' Schedule from the sale for recovering the decree debt. It is the contention of the petitioner that C Schedule being the place where they live, an attempt could be made first to proceed against A and B Schedules and only if the proceedings did not satisfy the decree, the residential house can be proceed against. Having regard to the facts and circumstances of the case, I am of the view that the request of the petitioners should be considered. Accordingly, Ext.P5 order is set aside and E.A. 35/2004 in O.S 93/1999 on the file of the Sub Court, Kottarakkara is allowed. The Execution Court shall first proceed against A and B schedules and only if the proceedings do not satisfy the decree amount, then alone C Schedule shall be proceed against.

The writ petition is allowed as above.

KURIAN JOSEPH, JUDGE.

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